

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SERVISENSE.COM, INC.	DOCKET NO. FCU-02-17
------------------------------------	----------------------

**ORDER DENYING APPLICATION FOR REHEARING**

(Issued December 5, 2002)

On August 12, 2002, Utilities Board (Board) staff learned that a company using the name "The Iowa-Nebraska Telephone Company" (Iowa-Nebraska) was advertising local exchange services in Iowa without a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001), or registering with the Board, as required by 199 IAC 22.23(3) (2002). Board staff contacted a series of representatives of Iowa-Nebraska and related entities, including Eastern Telephone, Inc. (Eastern), and ServiSense.com, Inc. (ServiSense). ServiSense is an authorized provider of local exchange telecommunications services in Iowa, holding a certificate of public convenience and necessity issued pursuant to § 476.29.

On August 27, 2002, the Board issued an order to show cause, stating that it appeared Iowa-Nebraska and Eastern may be (1) offering land-line local telephone service in Iowa without first obtaining a certificate of public convenience and necessity from the Board, as required by § 476.29; (2) offering service without having a valid tariff on file with the Board, as required by § 476.4; (3) serving the former

customers of ServiSense without having obtained each customer's authorization to change the service, as required by § 476.103(3) and the Board's rules at 199 IAC 22.23; and (4) providing service without an up-to-date registration form, as required by 199 IAC 22.23(3).

The Board opened this formal complaint docket pursuant to § 476.3(1) to investigate the actions of ServiSense, Iowa-Nebraska, and Eastern. Those companies were given an opportunity to show cause why the Board should not find them in violation of one or more of the statutory provisions cited above or such other provisions of chapter 476 and the Board's rules as may develop through the course of this proceeding. They were also given an opportunity to show why the Board should not take appropriate action if such violations are found, including revocation of ServiSense's certificate of public convenience and necessity, among other possible remedies.

On September 6, 2002, Eastern and ServiSense filed a response to the order to show cause, stating that ServiSense was issued a certificate of public convenience and necessity on September 21, 2000. On August 20, 2001, ServiSense filed a petition under Chapter 11 of the Bankruptcy Code in the U. S. Bankruptcy Court, District of Massachusetts, and on February 11, 2002, as a part of that proceeding, Eastern purchased substantially all the assets of ServiSense.

Eastern and ServiSense further state that on June 20, 2002, Eastern entered into a Marketing and Operating Agreement with OnSystems Technology, LLP

(OnSystems). As a part of that agreement, Eastern authorized OnSystems or its nominee (in this case, Iowa-Nebraska) to acquire customers under the reseller ID account of OnSystems and pursuant to ServiSense's certificate. The customers were to remain on the ServiSense system until such time as Iowa-Nebraska received appropriate authority, when the customers would be transferred. The agreement specifically required that OnSystems and its nominees be in compliance with all appropriate regulatory requirements.

Eastern and ServiSense state they learned "substantial disturbing information about which [they were] previously completely unaware" when they received a letter from Board staff on August 23, 2002 (attached to the order to show cause as Attachment A). In response to the staff letter, on August 26, 2002, Eastern and ServiSense sent a letter to OnSystems informing OnSystems of the staff letter and instructing OnSystems to refrain from any and all marketing to and or provisioning of any more customers until various matters were resolved. A copy of the letter was attached to the response.

Eastern and ServiSense asserted that as a result of these actions, any potential harm to Iowa residents from the circumstances that are the subject of this investigation had been removed. Eastern and ServiSense concluded that all of the Board's concerns about Eastern or ServiSense should be alleviated and no further Board action was necessary.

The Board did not agree, finding that the response of Eastern and ServiSense failed to address all of the relevant issues, did not provide sufficient information, and was insufficient to satisfy the Board that Eastern, Iowa-Nebraska, and ServiSense are not continuing to violate Iowa law. Accordingly, on September 16, 2002, the Board gave notice to ServiSense that its certificate of public convenience and necessity would be revoked, pursuant to Iowa Code § 476.29(9), unless ServiSense filed a request for hearing or sufficient information to establish, without a hearing, that the certificate should not be revoked.

On September 23, 2002, Eastern and ServiSense filed their response to the Board's order of September 16, 2002. The response included copies of the bankruptcy court's order authorizing the sale of the assets of ServiSense; the February 1, 2002, "Management Agreement" between ServiSense and Eastern; the June 20, 2002, "Marketing & Operating Agreement" between Eastern and OnSystems; and a September 12, 2002, letter from Eastern to OnSystems providing notice of Eastern's termination of the Marketing & Operating Agreement. Eastern alleged that these documents, combined with the absence of any demonstrated harm to any Iowa resident, were sufficient to show Eastern's intent to "operate within the laws and rules of the State of Iowa." Eastern and ServiSense did not request a hearing.

On October 18, 2002, the Board issued an order finding the response filed by Eastern and ServiSense was inadequate to prevent revocation of ServiSense's

certificate. The Board found that the response did not demonstrate an intent to operate in a manner consistent with the laws of the State of Iowa; instead, it demonstrated that Eastern, OnSystems, and ServiSense had not made reasonable efforts to comply with the applicable statutes and regulations. The response demonstrated that Eastern and ServiSense had knowingly operated illegally in Iowa and had made material misrepresentations to the Board regarding the precise language of the Bankruptcy Court order and the companies' lack of reasonable effort to either transfer the ServiSense certificate or obtain a new certificate for Eastern. Accordingly, the Board revoked the ServiSense certificate.

On November 7, 2002, AltComm, Inc., f/k/a Eastern Telephone, Inc., filed an application for rehearing. AltComm submits that the Board's order revoking the ServiSense certificate was based upon a misunderstanding of the relevant documents and the fact that the Board was unaware of AltComm's name change.

Specifically, AltComm takes issue with the Board's statement that the Bankruptcy Court's order of February 12, 2002, made no mention of continued operation of ServiSense. AltComm refers to a separate document, the Management Agreement between ServiSense and Eastern, and points out that the Management Agreement contemplated continued operation by Eastern of the business of ServiSense. Next, AltComm points out that on September 26, 2002, it applied for approval from the Iowa Secretary of State to transact business within the state, which was granted on October 17, 2002. AltComm then points out that on October 17,

2002, "AltiComm applied for long distance certification in the State . . ." (Application for Rehearing at page 3).

The Board will deny AltiComm's application for rehearing. AltiComm has not shown any of the Board's findings of fact or conclusions of law to be erroneous in any material respect, such that rehearing or reconsideration of the revocation would be appropriate.

First, the Board's order correctly states that the February 12, 2002, order of the Bankruptcy Court does not mention continued operation of ServiSense by Eastern. AltiComm's reference to the Management Agreement, a separate document, does not change that fact. Moreover, the question of whether the Bankruptcy Court specifically approved continued operation of ServiSense is beside the point; as the Board stated in the order revoking ServiSense's certificate,

the Bankruptcy Court order is dated February 12, 2002, over eight months ago, yet Eastern still has not taken any steps to obtain its own certificate of public convenience and necessity in Iowa. If Eastern truly intended to "operate within the laws and rules of the State of Iowa," it would long ago have filed an application for transfer of the certificate.

(Order Revoking Certificate at page 6.) Eastern and ServiSense were well aware of their obligation to obtain proper regulatory approval for transfer of any certificates issued to ServiSense, see Article 4.1 of the Management Agreement, yet no such steps were being taken in Iowa at the time this proceeding was commenced. It is this mis-use of ServiSense's certificate that supports the Board's decision to revoke the

certificate, not the presence or absence of any particular language in the Bankruptcy Court's order.

AltiComm claims that it was, in fact, making the necessary applications, but admits the Board could not have been aware of that fact because Eastern never informed the Board that it decided, at some unspecified date, to file all applications under the AltiComm name, rather than Eastern. AltiComm then points to its application to the Iowa Secretary of State and its registration pursuant to 199 IAC 22.23 as evidence that it was seeking the necessary approvals. These facts do not justify granting rehearing in this case.

First, Eastern/AltiComm did not begin the process of obtaining the necessary certifications to do business in Iowa until September 26, 2002, six weeks after Board staff first contacted Eastern about this matter and a month after the Board issued an order to show cause. These filings only demonstrate that AltiComm was willing to take steps to obtain the necessary regulatory approval after it was caught; they do not establish that the company ever intended to obtain those approvals on its own motion.

Second, the Board's order revoking the certificate correctly states that as of October 18, 2002, the date it was issued, Eastern "still has not taken any steps to obtain its own certificate of public convenience and necessity in Iowa." A few days prior to that date, AltiComm received an acknowledgement from the Secretary of State that it had filed a certificate of authority to transact business in Iowa, and the

day before the Board issued its order AltiComm registered with the Board for purposes of providing long distance services, but neither of those actions is a filing for a certificate of public convenience and necessity to provide local exchange service pursuant to Iowa Code § 476.29. The Board's order is correct and rehearing is unnecessary.

Moreover, the certificate from the Secretary of State and the long distance registration filed with the Board were both done in the name of AltiComm, rather than Eastern. Throughout this proceeding, Eastern never informed the Board that it had chosen to operate under the AltiComm name, and the Board cannot be expected to know that a registration filed by one corporation is somehow supposed to work to the benefit of another corporate entity with a completely different name. One of the facts that has made it difficult for the Board to accept the representations made by the various companies in this docket is the constantly-shifting nature of the entities involved. Iowa-Nebraska, Eastern, ServiSense, OnSystems, and AltiComm have all played some part in this docket, and there has been no representation that this is the full extent of the corporate family. It may very well be that there is a legitimate corporate purpose for each of the various entities involved, but that purpose is not apparent in this record.

AltiComm has not provided any substantial reason for the Board to conclude that rehearing of its order revoking the ServiSense certificate is appropriate. The Board's decision to revoke was based on the fact that ServiSense is no longer



providing local exchange service in its own name or in any other name listed in its tariff; instead, Eastern and Iowa-Nebraska were trying to offer service using the ServiSense certificate. That is a mis-use of the certificate and, in the absence of an adequate explanation, justifies revocation. The application for rehearing will be denied.

**IT IS THEREFORE ORDERED:**

The "Application for Rehearing" filed on November 7, 2002, by AltiComm, Inc., f/k/a Eastern Telephone, Inc., on its own behalf and as Manager of ServiSense.com, Inc., is denied.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5<sup>th</sup> day of December, 2002.